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May 13, 1996

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EX PARTE

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED
MAY 13 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: CS Docket No. 96-46, Open Video Systems (OVS)

Dear Mr. Caton:

A meeting was held May 10, 1996 with Mary McManus, Legal Advisor to Commissioner Ness, to discuss issues raised in the pending OVS rulemaking. The Joint Parties' were represented by, Jay Bennett-Pactel. Karen Possner and Mike Tanner-BellSouth, Kathy Rehmer-SBC and the undersigned. Also present were Jean Kiddoo representing MFS and RCN and Chuck Cosson representing USTA.

Positions discussed in the meeting were consistent with the parties filings in this proceeding. Attached is a handout distributed during the meeting.

Please include this filing as part of the public record in the above-captioned proceeding. This notice is being filed one day late due to the late hour at which the meeting ended. Please call me if you have any questions concerning this filing.

Sincerely,

Marie Breslin

Attachment

cc: Mary McManus

¹ The Joint Parties consist of Bell Atlantic Telephone Companies and Bell Atlantic Video Services; BellSouth Corporation and BellSouth Telecommunications; GTE Service Corporation and its affiliated domestic telephone operating companies and GTE Media Ventures, Inc.; Lincoln Telephone and Telegraph Company; Pacific Bell; SBC Communications, Inc. and Southwestern Bell Telephone Company.

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Initial Proposed Ordinance by City of Irving

operated by an MCS provider, generally only available to schools, hospitals, government buildings and similar institutions, which is able to provide both upstream capacity needed by the City and the downstream needs of all served facilities+

- (45) "Late charge" means a charge which is added to a subscriber's account or bill for non-payment of a previously due and delinquent account..
- (46) "Local" means within the geographical boundaries of the City of Irving, Texas.
- (47-54) RESERVED.
- (55) "Mayor" means the Mayor for the City of Irving, Texas.
- (56) "MCS" means multi-channel service.
- (57) "MCS provider" or "Multi-channel service provider" means any person or group of persons who:
- a) provides multi-channel video, voice and/or data communications programming or service over a multi-channel system and directly or indirectly owns a significant interest in such multi-channel system; or
 - b) otherwise controls or is responsible for, through any arrangement, the management and operation of such a multi-channel system.

The term "MCS provider" or "multi-channel service provider" specifically includes the terms "cable operator", "MCS provider" or "multi-point distribution system provider", "MMDS provider", "open video system operator", ~~"personal communications network system provider (where applicable)"~~ and "SMPTV operator" (where applicable). An MCS provider need not own the transmission facilities over which its multi-channel service is delivered. References in the ordinance to MCS provider shall encompass subsidiary companies and other affiliates with whom the MCS provider has transactions affecting its provisions of multi-channel services.

- (58) "MDS" means multi-point distribution system.

- (59) "MDS provider" or "Multi-point distribution system provider" means any person or group of persons who is authorized by the FCC, within frequency boundaries established by the FCC, to transmit specialized multi-channel programming or data or facsimile transmission to subscriber-selected locations.
- (60) "Multi-channel programming service" or "Multi-channel service" means:
- a) the transmission to subscribers of video programming, or other programming service; and
 - b) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- (61) "Multi-channel system" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment designed to provide multi-channel programming service to multiple subscribers in the City of Irving and vicinity.
- ~~b) a facility consisting of infra-red transmission or point-to-point transmission (as permitted by law); or~~
- ~~c) any functional equivalent that is designed to provide multi-channel service which includes video, voice and data programming or service and which is provided to multiple subscribers within the City.~~

However, such term does not include the following:

- (a) a facility that only retransmits the television signals of one (1) or more broadcast stations; or
- (b) a facility that (i) serves only subscribers in one (1) or more multi-unit dwellings under common ownership, control, or management; ~~and unless such facility or facilities uses any public rights-of-way;~~ (ii) such facility does not use any public rights-of-way; or
- (c) a facility or common carrier which is subject, in whole or in part, to the provision of Title II of

the Communication Act of 1934 ~~except~~ that such facility shall be considered a multi-channel system ~~(other than for purposes of Section 321 (c) of the CCPA codified at 47 USC 541)~~ to the extent such facility is used in the transmission of multi-channel programming service to subscribers to such service; voice, or data programming or service directly to subscribers; or

(d) any facilities of any electric utility used solely for operating its electric utility.

- (62) "Open video system operator" means a common carrier operating a wire-based video programming distribution system certificated by the Federal Communications Commission pursuant to Section 653 (a) of the Communications Act of 1934, 47 U.S.C. § 573(a), as added by Section 302 of the Telecommunication Act of 1996. P.L. 104-104.
- (63) "Other programming service" means information that an MCS provider makes available to all subscribers generally.
- (64) "Open Video System (OVS) means a local exchange carrier may provide cable service to its cable service subscribers in its telephone service area through an open video system that complies with the Act. The conditions under which a LEC may provide OVS will be determined by regulations that the FCC will prescribe consistent with the public interest, convenience, and necessity. Unlike a cable operator, the operations of an OVS must make available two-thirds of its capacity for use by others through reasonable, non-discriminatory tariffs.
- (65-69) RESEWED.
- (70) "Pay-per-view" means single programming offered by an MCS provider for which a subscriber selects and pays a separate fee to view. The programming would not be available to subscribers who do not choose to pay for viewing..
- (71) "Person" means any individual, corporation, business, trust, estate, trust, partnership, as sociation of two (2) or more persons having a joint common interest.

with City representatives, ~~when these that~~ MCS provider makes such technologies available to ten (10) percent or ~~more~~ of its national subscriber base.

SECTION 73: SPECIFIC ADDITIONAL PUBLIC, EDUCATIONAL, AND GOVERNMENTAL RULES FOR MCS PROVIDERS.

- A) The City recognizes that fostering a sense of community is one of the goals of local government and that television plays a key role in the information age of providing individuals with knowledge about their community, their government, their schools and issues of importance locally. The City is committed to communicating local information to the broadest spectrum of the community and in order to implement said goals, the City imposes the requirements of this section.
- B) An MCS provider shall provide at its own expense:
- (1) three (3) channels on the system designated for use by the City for programming produced by Irving Community Television Network;
 - (2) one (1) educational access channel;
 - (3) one (1) public access channel that is available for use by various community groups, individuals and organizations which shall be operated by the KS provider;
 - (4) a commercial access channel leased from the MCS provider pursuant to federal law; and
 - (5) a separate institutional network shall be provided for interactive transmission between schools, governmental buildings, hospitals, institutions and other selected locations.
- C) The City reserves the right to increase the above minimums either by amendment to this ordinance or through requirements in a franchise or authorization agreement.
- D) ~~Each~~ MCS provider shall at its own expense:

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- (1) Employ reasonable efforts and **methods** to inform citizens of Irving of the **availability** of public access;
 - (2) Provide public use of one **production studio** in the city and the production and editing equipment at that studio reasonably necessary to **produce** programming of a reasonable **quality** and technically sufficient to be **cable** cast, subject to such rules and regulations **for** use as **are** reasonably necessary to prevent **loss** or damage to such studio or equipment. This provision does not require that each MCS provider **furnish** its own separate studio. An MCS provider may meet the terms of this subsection by **furnishing** its own local studio, or by joining with another MCS provider to make available a **local** studio or by joining with a community college *or* another company to make available a **local** studio; and
 - (3) Provide such instruction in the **use** of the **studio** and production and editing equipment as is reasonably necessary for its **proper use**.
- E) Costs of fulfilling public, educational and governmental requirements:
- (1) Each MCS provider shall bear **the** cost of meeting public, educational and **governmental** requirements;
 - (2) **An** MCS provider shall pay a **uniform** per **user** charge to the City to **support the** Irving Community Television Network, to be set out in **each** franchise, 'license or permit; **and**
 - (3) Additional requirements, such as special project grants, may be set forth in individual MCS provider's franchises.
- F) In the event there are multiple MCS providers operating concurrently in the City, the City Manager may require each MCS provider to interconnect: all the respective PEG, I-Net, and leased channels, or some of them, with those of one or more other MCS providers to jointly provide some or all of the services, facilities, and funding required under this section. Alternatively or cumulatively, the

City Manager may commute duplicative services under this section into monetary payments.

SECTION 74: RESEWED.

SECTION 7.5: "BLOCKING" CHANNELS; MCS PROVIDER CIVIL LIABILITY.

- A) An MCS provider shall effectively block out any channel upon user request. Effectively blocked means that no audio, video, data or any other signal is received over that channel by the user who requested blocking. An MCS provider shall inform users of their right to block channels at time of installation and at least quarterly thereafter. The notice may be included in a billing statement.
- B) Nothing in this Ordinance shall be deemed to affect the criminal or civil liability of MCS providers pursuant to the Federal, State, or local law of libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising, or other similar laws.

SECTION 76: EQUIPMENT COMPATIBILITY.

- A) The City recognizes the fact that it is in the public's interest to be able to utilize the functions inherent in subscriber receiving equipment, without having to incur additional costs to obtain the same functions.
- B) At a minimum, an MCS provider shall meet all federal requirements concerning equipment compatibility.
- C) If an MCS provider has equipment which is compatible with the users equipment in other systems, it shall provide Irving users with the same compatibility, unless the MCS provider can demonstrate to the City that it is technically or economically unfeasible or commercially impracticable to provide such equipment to Irving users.

SECTION 77: MISCELLANEOUS PROVISIONS - TAMPERING AND UNAUTHORIZED RECEPTION OF CERTAIN SERVICES.

- A) No person shall intercept or receive, or assist in intercepting or receiving any communications service offered over a multi-channel system, unless